IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

Civil Writ Petition No.18474 of 2007
Date of Decision: 11.12.2007

Ex-Constable Ashok Kumar

Petitioner

Versus

State of Haryana and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**
HON'BLE MR. JUSTICE JASWANT SINGH

Present: Shri R.K.Malik, Advocate for the petitioner

Jasbir Singh, J.

The petitioner was serving as a constable in police department of State of Haryana. Vide order dated 7.7.2006 (Annexure P/6), he was dismissed from service. His appeal was dismissed on 1.9.2006 (Annexure P/8). He also failed in revision, which was declined on 3.5.2007 (Annexure P/10). Hence, this writ petition.

Record reveals that the petitioner entered police department of the State of Haryana in the year 1991. On 1.2.2003, he was posted as driver on motorcycle in P.S. City Rohtak. He was on duty at railway crossing point at Bhiwani road, Rohtak between 6.00 AM to 10.00 AM. He absented at about 6.03 AM, leaving the motorcycle and the rider at the spot. Absent report was lodged at the instance of his co-constable (rider). Subsequent thereto, wireless message was received from P.S. Kurali (Punjab) on 4.2.2003, stating that the petitioner was arrested in FIR No.15 dated

2.2.2003, registered under Sections 399, 402 IPC and 25/54/59 of the Arms Act. On account of his absence from duty without leave, the petitioner was put under suspension. Departmental enquiry was initiated, however, it was kept in abeyance to await result of the pending criminal case against the petitioner. The petitioner along with his co-accused was tried for the offence, referred to above, in the Court of Additional Sessions Judge, Roopnagar and vide judgment dated 28.2.2005, by giving him benefit of doubt, he was acquitted of the charges framed against him. On receipt of copy of the judgment, the punishing authority, by noting the points mentioned hereinafter, ordered departmental enquiry against the petitioner:-

> *"1. The place of occurrence in this case has not been shown in the map.*
>
> *2. S.I. Bhagwant Singh had caught the delinquent official at the spot who did not examine the case properly. Due to not examining the case properly, this evidence cannot be taken into consideration in toto.*
>
> *3. Private witness: Avtar Singh was not produced in the Court.*
>
> *4. Private witness: Gurdial Singh turned hostile.*
>
> *5. Private witness: Beant Singh was not produced in the Court."*

The enquiry officer was appointed, before whom evidence was led by both the parties. On conclusion of the enquiry proceedings, the enquiry officer submitted his report (Annexure P/3) to the punishing authority. The enquiry officer concluded as under:-

> *"The charge of absenting from duty deliberately without informing the department and without getting leave sanctioned*

and absenting from rider duty and involving himself in case FIR No.15 dated 2.2.2003 under Sections 399, 402 IPC and Sections 25, 54, 59 Arms Act registered in Police Station Kurali, District Ropar (Punjab) stands proved against the delinquent official."

The punishing authority, by taking note of the findings given by the enquiry officer, issued a show cause notice (Annexure P/4) along with a copy of the enquiry report, to the petitioner on 15.5.2006, asking him to furnish his explanation as to why punishment of dismissal be not passed against him. The petitioner submitted reply to the above said show cause notice and vide order Annexure P/6 dated 7.7.2006, after taking note of the objections raised by the petitioner in his reply, the punishing authority ordered his dismissal from service. The petitioner failed in appeal and revision.

Counsel for the petitioner has vehemently argued that as copy of the enquiry report, before issuing show cause notice (Annexure P/4) dated 15.5.2006, was not supplied to the petitioner, it vitiated the disciplinary proceedings against him, as such, impugned orders deserve to be quashed on this score alone. To say so, reliance has been placed upon a Division Bench judgment of this Court in *Ramesh Kumar v. State of Haryana and others (CWP No.17710 of 2005), decided on 15.5.2006.* Copy of the judgment, referred to above, has been placed on record as Annexure P/11.

After hearing counsel for the petitioner, this Court is of the opinion that the argument raised, is liable to be rejected.

As per judgment of the Hon'ble Supreme Court in *Managing Director, ECIL Hyderabad and others vs. B.Karunakar and others,* (1993)4

SCC 727, notice of which was also taken by this Court, while rendering judgment in *Ramesh Kumar's case (supra),* it was held that non-supply of enquiry report, before issuance of show cause notice for imposition of major penalty, ipso facto, will not make punishing order bad, unless it is proved by the delinquent official that some prejudice was caused to him, in not getting copy of the enquiry report before issuance of show cause notice. In this case, counsel for the petitioner has failed to show as to what prejudice was caused to the petitioner in not getting the copy before issuance of show cause notice (Annexure P/4). Record reveals that the petitioner has furnished a detailed reply (Annexure P/5), running into 16 pages to the show cause notice, stating his entire case. In the reply, it has no where been stated that as to what prejudice was caused to the petitioner in not getting the enquiry report before issuance of show cause notice to him. Otherwise also, show cause notice (Annexure P4) clearly indicates that the punishing authority, after looking into the findings of the enquiry report, had formed only a tentative opinion. It has been so said by the punishing authority in the impugned order Annexure P/6. Under these circumstances, if explanation given by the petitioner was sufficient, the show cause notice would have been withdrawn.

A Division bench of this Court in *Union Territory, Chandigarh through its Administrator v. Central Administrative Tribunal, Chandigarh Bench, 2003(2) SCT 121,* also held that a delinquent official can get the benefit of non-supply of enquiry report,before issuance of show cause notice only if he alleges and proves that some prejudice was caused to him by that action of the punishing authority. As the petitioner has failed to say so when he filed his reply Annexure P/6 to the show cause notice and

also failed to prove before us the above said fact, we feel that no benefit can be given to him at this stage.

Further contention of counsel for the petitioner that in view of provisions of Rule 16.3 of the Punjab Police Rules (as applicable to Haryana), once the petitioner was acquitted in a criminal case, the departmental proceedings could not have been initiated against him, is also liable to be rejected. Perusal of the provisions of the rule, referred to above, clearly indicates that even after acquittal in a criminal case, the punishing authority can start departmental proceedings against the delinquent official, if in its opinion, the judgment of acquittal was passed on technical grounds, the witnesses have been won over etc.

In the present case, besides involvement in a criminal case, it was charge against the petitioner that he went absent from duty without any leave and intimation to the department. It is not in dispute that on 1.2.2003, he was on duty between 6.00 AM to 10.00 AM at railway crossing point Bhiwani road, Rohtak. During enquiry, allegation of absence from duty stood proved against him. The petitioner did not inform the department as to why he was absent or whether he was falsely involved in a criminal case by the Punjab police. Before the enquiry officer, it was said by the petitioner that he had made oral complaint with regard to his false involvement in the criminal case, but no proof was brought on record to prove that assertion. Before this court, a mis-statement of fact has been made by the petitioner by stating that he failed to make any representation because he remained confined in jail throughout i.e. from the date of his arrest till judgment of acquittal was passed. Perusal of judgment passed by the Additional Sessions Judge, Roopnagar (Annexure P/1), indicates that during pendency of trial, bail was granted to the petitioner and his co-

accused. This fact found mentioned at page 27 of this paper book. On account of making mis-statement, this writ petition deserves dismissal.

Furthermore record reveals that the punishing authority, on perusal of judgment of acquittal (Annexure P/1), came to a conclusion that the acquittal was on technical ground and further that prosecution has failed to produce evidence and on account of that, the petitioner was acquitted. This Court feels that the enquiry proceedings were rightly initiated against the petitioner. Perusal of judgment (Annexure P/1) shows that the prosecution had conducted its case in a very slipshod manner. For want of bringing evidence in Court, evidence of prosecution was closed. Furthermore, material prosecution witness Balwant Singh, who was to prove material documents, was not brought in Court for recording his further evidence and cross-examination. His testimony was ignored on that account. It was also noticed that independent witness did not support case of the prosecution. We are satisfied that the said witness might have been won over by the petitioner. Second eye witness was not produced in Court. The Sub inspector and two other independent witnesses did not identify co-accused of the petitioner. Testimony of S.I. Balwant Singh (PW8) was ignored on account of the fact that there was no corroboration to the same. The trial Court has given benefit of doubt only, to the petitioner and it was not his honorarable acquittal. In view of facts mentioned above, this Court is satisfied that the departmental enquiry was rightly initiated against the petitioner.

Even if the defence taken by the petitioner is presumed to be correct, for taking that defence, he renders himself guilty of gravest act of mis-conduct, which definitely will entitle dismissal from service. During

departmental enquiry, following defence was taken by the petitioner, (as is depicted in para 3 of this writ petition):-

> *"That on 1.2.2003 when the petitioner was on duty near Railway Phatak on Bhiwani Road at Rohtak, one Madan Lal the relative of the petitioner came along with some police official of the Punjab Police in Tata Sumo. Madan Lal requested the petitioner for help of Rs.20,000/- which has to be handed over to the Punjab Police officials who were sitting in Tata Sumo. The petitioner asked for the reason of amount but Madan Lal was insisting for help of Rs.20,000/-. The petitioner talked to Inspector of the Punjab Police and asked for the reason but they did not disclose anything to the petitioner. But shouted at him to bring Rs.20,000/- otherwise they will take Madan Lal. The petitioner asked a near by Tea Shop owner who was known to the petitioner for Rs.20,000/-. The petitioner gave the said amount to Madan Lal. But instead of taking the money and leaving back Madan Lal the Punjab Police official tried to take Madan Lal along with them in their Tata Sumo Jeep. The petitioner objected to it. The Punjab Police Official took the petitioner also forcibly. The petitioner and Madan Lal were taken to Kurali (Ropar) where four more persons of Rohtak were kept in a custody by the Punjab Police. A false criminal case was registered against the petitioner and other persons under section 399, 402 and 25/54/59 of Arms Act. The petitioner remained in custody till he was acquitted by the Criminal Court vide judgment dated 28.2.2005."*

Admission made by the petitioner in this paragraph establishes beyond doubt that he had committed the crime of arranging bribe money to be given to the official of the Punjab police. Being a member of the disciplinary force, it was his duty to immediately intimate his superiors if anything of the nature, as alleged by him, had happened. Defence taken by the petitioner also appears to be unplausible and a made up affair. It cannot be believed that a police official on duty, in day light, can be taken away by official of Punjab police, as has been said by the petitioner. The petitioner had made no hue and cry with regard to his false involvement in the criminal case. At no time, he/ his family members brought this fact to the notice of the higher authorities. Otherwise also, as per admission made by the petitioner, officials of the Punjab police were demanding Rs.60,000/- by way of bribe, which was paid. If that was so, there was no occasion for those officials to register a case against the petitioner and his co-accused thereafter. During departmental enquiry, the petitioner has tried to prove that Rs.40,000/- were got returned from Jagdish Singh (DW2), to whom this money was entrusted for preparation of jewelarry by Madan, a co-accused of the petitioner. Testimony of this witness is not believable as he has not produced any record in Court, to prove the above said fact. Story of borrowing Rs.20,000/- from a rehri owner, who was doing the business of tea selling, on a road side, is also not believable. This Court feels that during investigation, it was established that besides being absent from duty, the petitioner has committed act of gravest mis-conduct. In view of that we feel that, on account of his length of service, the petitioner was not entitled to get any benefit.

Dismissed.

(Jasbir Singh)
Judge

December 11, 2007 **(Jaswant Singh)**
gk **Judge**